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purchase money is paid, and he subsequently resells the land to his grantor for the amount agreed to be paid by him and conveys the same to his grantor by a deed from himself and wife which is lost before being admitted to record, his widow has no claim on the land, whatever may be her claim on the one-third of the purchase price for which no lien was reserved.

4. COVENANT OF SEISIN—*Breach—Damages.* The covenant of seisin is broken, if at all, as soon as it is made, but the damages to be recovered therefor are not necessarily the consideration paid, but are to be measured by the actual loss sustained, and if, before any injury is sustained the covenantor perfects his title by inurement, the recovery for the breach of the covenant will be limited to nominal damages only.

5. COVENANTS—*Seisin—Further assurances—Supplying evidence of title—Damages.* A grantor who has covenanted that he has the right to convey, and that he will give further assurances of title, may, before his grantee has suffered any damage or been disturbed in his possession and before suit for breach of his covenants, set up and supply a missing link in the chain of his title whereby his grantee is assured of his title and possession.

6. CHANCERY JURISDICTION—*Lost deeds—Effect of decree setting up deed—Evidence.* Courts of equity have jurisdiction to set up lost deeds, and when so set up in a suit in which the court has jurisdiction of the parties and the subject matter, the decree and the deed made in pursuance thereof are proper evidence of the passing of the title by the lost deed and they cannot be assailed in any collateral proceeding. The decree alone is sufficient without the introduction of other parts of the record.

7. LOST DEED—*Husband and wife—Decree setting up deed—Dower.* A decree of a court of chancery setting up an unrecorded deed of husband and wife, which has been lost, does not operate to debar the wife, on the death of her husband, from claiming dower in the land, if she was otherwise entitled to it. The execution and delivery by her of the lost deed did not convey her interest. Admission to record was necessary to accomplish that.

MARYE, AUDITOR, v. BOARD OF AGRICULTURE.—Decided at Richmond, January 12, 1899.—*Keith, P.*

1. BOARD OF AGRICULTURE—*Out of what fund salaries and expenses to be paid—Public funds.* The appropriation bill approved March 3, 1898, expressly forbids the payment of the salaries of the Commissioner of Agriculture and his clerk, and the expenses of the Bureau of Agriculture, or any part thereof, out of the public treasury, and repeals, if not expressly, by necessary implication, all former laws authorizing such payment. No money can be paid out of the public treasury except in pursuance of appropriations made by law, and in the case at bar there has been no such appropriation. The act provides that the salaries and expenses aforesaid shall be paid "from the fees and taxes collected on forfeitures."

GRAND FOUNTAIN, U. O. T. R. v. WILSON. Decided at Richmond, January 12, 1899.—*Keith, P.* Absent, *Reily and Cardwell, JJ.*

1. EVIDENCE—*Assignments—Testamentary papers—Insurance.* An endorsement

on a life insurance policy by the beneficiary therein which is testamentary in its character, but which has not been, and cannot be admitted to probate is not admissible in evidence to show title in the legatee named in said endorsement, and a payment of the policy by the insurer to such beneficiary is wrongful. Nor, in an action on the policy, is evidence relevant that merely tends to show that the endorsement was made in the presence of witnesses, at the special instance and request of the beneficiary, and that she made her mark as a signature thereto. A will must be proved before a probate court in a proceeding for that purpose.

SPILLER AND OTHERS V. WELLS AND OTHERS. Decided at Richmond, January 12, 1899.—*Keith, P.*

1. **CONFLICT OF JURISDICTION**—*How determined—How jurisdiction acquired.* Between courts of concurrent jurisdiction, except as to technical creditors' bills, that court which first acquires cognizance of the controversy, or obtains possession of the property in dispute, is entitled to retain it until the end of the litigation, and should decide all questions which legitimately flow out of the controversy. Jurisdiction is acquired by the issue and service of process, and in case of conflict between courts of concurrent jurisdiction, the date of service of the process determines the priority of the jurisdiction. The first suit, however, must afford the plaintiff in the second an adequate and complete opportunity for the adjudication of his rights.

2. **MECHANIC'S LIEN**—*Suit by sub-contractor—Act of limitation as to general contractor and other sub-contractors.* A suit by a sub-contractor to enforce a mechanic's lien which has been duly recorded, to which the general contractor is made a party defendant, and his recorded lien properly set forth in the bill, stops the act of limitation from running not only on the complainant's lien, but also on the lien of the general contractor and all claiming as contractors under him, and operates to suspend any further suit by any one or more of them during the pendency of the suit instituted by the sub-contractor.

BURRUSS V. NATIONAL LIFE ASSOCIATION OF HARTFORD, CONN.—Decided at Richmond, January 12, 1899.—*Harrison, J.*

1. **INSURANCE**—*Application a part of policy—Section 3252 of Code applies to application.* Section 3252 of the Code, which provides that no failure to perform any condition or restrictive provision of an insurance policy shall be a valid defence to an action thereon unless such condition or restrictive provision be printed in type of a specified size, or written with pen and ink in or on the policy, applies alike to the application, and the policy issued thereon, where the application is expressly made a part of the contract of insurance.

2. **INSURANCE**—*False statements of applicant—Knowledge of agent.* No recovery can be had on a life insurance policy procured upon wilfully false statements of the assured of facts material to the risk, although the insurance was solicited by the agent of the insurance company, and the beneficiary informed the agent that he did not believe insured could obtain insurance, that he had heard that insured was in bad health, and had been rejected by other companies.

INSURANCE—*Misrepresentations of assured—Ignorance of beneficiary.* If insur-